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8 UNITED STATES DISTRICT COURT

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10 NORTHERN DISTRICT OF CALIFORNIA

11 VILMA SERRALTA,

No. C0801427 CW

12 Plaintiff,

DEFENDANTS' MEMORANDUM OF
POINTS AND AUTHORITIES IN
OPPOSITION TO PLAINTIFF'S MOTION
FOR AN ORDER TO SHORTEN TIME ON
PLAINTIFF'S MOTION TO COMPEL
PRODUCTION OF DOCUMENTS

13 vs.

14 SAKHAWAT KHAN; ROOMY KHAN;
and DOES ONE through TEN,
15 inclusive,

Date: To be Set
Time: To be Set
Dept.: Courtroom: 2 (4th Floor)
Judge: Honorable Claudia Wilken

16 Defendants.

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18 I. STATEMENT OF ISSUES

19 Plaintiff Vilma Serralta's "Motion for an Order Shortening Time on Plaintiff's Motion
20 to Compel Production of Original Documents" ("Motion to Shorten Time") lacks merit and is
21 not necessary. On April 9, 2009, defendants Roomy Khan and Sakhawat Khan agreed to
22 produce for inspection all original documents responsive to plaintiff's requests on or before
23 April 27, 2009; and to send these documents directly to plaintiff's expert. At the same time,
24 defendants also proposed the parties stipulate to extend the April 20, 2009 expert
25 discovery cut-off date to provide plaintiff's expert with time to evaluate the documents and
26 prepare a report. Plaintiff, therefore, moves this court to compel documents that
27 defendants already agreed to produce for inspection.

1 The singular purpose for plaintiff's Motion to Shorten Time is to deny defendants'
2 expert the ability to evaluate defendants' original documents first. Plaintiff's claim for
3 priority in inspection of documents is unsupported by law and unreasonable. Moreover,
4 plaintiff's position and tactics stymie the parties' efforts to reasonably resolve these
5 discovery issues. For these reasons, this court should deny plaintiff's Motion to Shorten
6 Time.

II. STATEMENT OF FACTS

On April 9, 2009, defendants agreed to produce all original documents responsive to plaintiff's requests by April 27, 2009. See the Declaration of Jonathan D. Hicks in Support of Defendants' Non-Opposition to Plaintiffs' motion to extend expert cut-off dates and Defendant's Opposition to Plaintiff's Motion for an Order Shortening Time for Plaintiff's Motion to Compel Original Documents (Hicks's Dec.), ¶ 2, Exhibit A. Concurrently, defendants offered to send the original documents directly to plaintiff's expert to avoid any unnecessary delay. *Ibid.* Defendants also offered to stipulate to extend any upcoming discovery due dates so that plaintiff's expert could have enough time to evaluate defendants' original documents. *Ibid.* During the extensive meet and confer discussions between plaintiff's counsel and defense – and to date -- defendants never changed their agreement to make defendants' documents available by April 27th and to stipulate to extend any upcoming discovery dates. Hicks's Dec. ¶¶ 2 and 3, Exhibits B and C.

20 Despite defendants' consistent position, plaintiff was determined to file a motion to
21 compel because plaintiff believes that she is entitled to deny defendants' expert the right to
22 evaluate defendants' original documents first.

23 Because of your refusal to produce the documents requested until April
24 27, I informed you that Plaintiff will be moving to compel their production
25 prior to that date [parenthetical omitted], and prior to their examination by
your expert. . . . As I made clear to you on the phone, this issue is not
whether you have agreed to produce the documents requested, but
when you will produce them. Hicks's Dec. ¶ 6, Exhibit C (C. Chung's
26 April 9 email at 6:48 PM), emphasis added.

27 On April 12, 2009, defendants proposed an expert disclosure discovery cut-off date
28 of May 11, 2009. Hicks's Dec. ¶ 7, Exhibit C (J. Hicks's April 12 email at 2:23 PM.)

1 Plaintiff refused; but the proposed order for plaintiff's motion to compel defendants'
 2 production of original documents requests a May 11, 2009 expert disclosure cut-off date.

3 **III. LEGAL ARGUMENT**

4 Plaintiff's Motion to Shorten Time must, among other things, describe the
 5 "substantial harm or prejudice" that would occur if time is not shortened and the moving
 6 parties' efforts to meet and confer pursuant to Civil L.R. 37-1(a). U.S. Dist. Crt., N. Dist.,
 7 Civ. L.R. 6-3(a) (3) and (4). The parties must in good faith meet and confer in an attempt
 8 to reasonably resolve any discovery dispute. Fed. Rule. of Civ. Proc., Rule 37(a)(1); see
 9 also U.S. Dist. Crt., N. Dist., Civ. L.R. 6-3(a) (4). This court may deny the plaintiff's
 10 discovery motion for failure to act in good faith in an attempt to resolve the discovery issue.
 11 *Robinson v. Potter* (8th Cir., 2006) 453 F.3d 990, 995.

12 **A. Plaintiff will not suffer any substantial harm or prejudice if this Motion to
 13 Shorten Time is denied – or if plaintiff's Motion to Compel is denied.**

14 Plaintiff's Motion to Shorten Time is scant on any facts that suggest plaintiff would
 15 be prejudiced by defendants' April 27 production of original documents directly to plaintiff'
 16 expert, but it is replete with accusations about defendants and defense counsel's
 17 character. Plaintiff's only claims of substantial prejudice or harm are:

- 18 1. plaintiff must obtain a "full and fair opportunity" to examine original
 19 documents (Plaintiff's Motion to Shorten Time, pp. 1:4-6 and
 20 4:24-28); and/or
 21 2. defendants' original documents might be inadvertently spoiled the more
 22 frequently the original documents are handled (Plaintiff's Motion to Shorten
 23 Time, p. 5:2-7).

24 Assuming these factors rise to the level of "substantial prejudice or harm,"
 25 defendants' agreement to produce the documents by April 27 and send them directly to
 26 plaintiff's expert does not prejudice plaintiff or cause plaintiff any harm. As offered on April
 27 9th, plaintiff will have a full and fair opportunity to evaluate defendants' original documents.
 28 Moreover, defendants' proposal to send the documents directly to plaintiff's expert not only

1 reduces the number of persons that interact with the documents, but this expert-to-expert
 2 exchange will insure plaintiff's expert will have the documents to review as quickly as
 3 possible. Interestingly, under plaintiff's original proposal (Hicks's Dec. ¶4.), plaintiff
 4 requested defendants produce the documents to their office in San Francisco; then
 5 presumably, these same documents would be sent to plaintiff's expert in laboratory. As
 6 such, plaintiff would suggest defendants (1) gather the documents, (2) courier the
 7 documents to San Francisco, (3) then plaintiff's would courier the same documents to
 8 plaintiff's expert, (4) who would then courier the documents back to plaintiff or defense
 9 counsel, and (5) defense counsel would then courier the documents to their expert. This
 10 proposal dramatically increases the number of times these documents are handled, over
 11 defendants' April 9th proposal for an expert-to-expert exchange.

12 Accordingly, plaintiff's fail to describe in any detail the substantial prejudice that
 13 would befall plaintiff if this Motion to Shorten Time is denied.

14 **B. Plaintiff's did not meet and confer regarding this discovery issue in good
 15 faith; as such plaintiff's motions could have been avoided.**

16 Defendants' April 9th proposal was reasonable and will provide the same result that
 17 plaintiff ultimately seeks through these motions. Although the parties did not initially agree
 18 on the date for the expert discovery cut-off; before plaintiff filed these motions, defendants
 19 agreed to the May 11, 2009 date that plaintiff's now seek.

20 Plaintiff's motions are unnecessary because plaintiff's had a easier, quicker, and
 21 less expensive option – request an intervention of the court pursuant to Civil L.R. 37-1(b).
 22 Ultimately, this dispute is about whom is entitled to evaluate defendants' original
 23 documents first. Plaintiff's claims regarding the expert disclosure deadlines and access to
 24 defendants' original documents was reasonably resolved on April 9th. Accordingly,
 25 defendants' believe the issue of whose expert is entitled to review the documents first,
 26 could have been resolved more efficiently by conferring with the District Judge or a
 27 Magistrate Judge, pursuant to the Local Rules.

28 Interestingly, concurrent with plaintiff's Motion to Compel, Motion to Shorten Time,

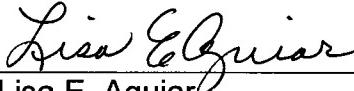
1 and Motion to Extend the Expert Discovery Cut-Off Dates, plaintiff filed a motion for
2 attorney's fees seeking \$13,903.68 in fees.

3 **IV. CONCLUSION**

4 For these reasons, defendants' respectfully request this court DENY plaintiff's
5 Motion to Shorten Time to bring a prompt end to the unnecessary, burdensome, and
6 expensive discovery motions filed by plaintiff. Denying plaintiff's motion would cause
7 plaintiff no harm and no prejudice plaintiff. In fact, this denial would reach the same
8 ultimate result as requested by plaintiff in her panoply of expensive motions.

9 DATED: April 14, 2009

10 HOGE, FENTON, JONES & APPEL, INC.

11 By 
12 Lisa E. Aguiar
13 Attorneys for Defendants

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